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In the High Court of Judicature at Madras

Dated:10.04.2006

Coram:

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.74 of 2006

K.Nelson .. Petitioner

vs.

1. The Commissioner of Police,
   Egmore, Greater Chennai,
   Chennai-600 008.

2. Secretary to Government,
   Prohibition and Excise Department,
   Secretariat,
   Chennai-9.

3. The Inspector of Police,
   H1, Washermanpet Police Station,
   Chennai.

4. The Superintendent,
   Central Jail,
   Chennai. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus to call for the entire records in No.554/BDFGISV/2005 dated 16.12.2005 and quash the order of detention in No.554/2005 dated 16.12.2005 order passed by the first respondent and to setaside the same directing the respondents to produce the petitioner namely Nelson alias Bulli, S/O.Kurolan before this Hon'ble Court who is now confined in Central Prison, Chennai and thereby setting him at liberty as stated therein.

For petitioner : Mr. R.Ramanlaal

For respondents : Mr. Abudukumar Rajarathinam
Govt. Advocate (Crl.side)

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ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner by name K.Nelson, challenges the impugned order of detention dated 16.12.2005, detaining him as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

2. Heard both sides.

3. At the foremost, learned counsel for the petitioner submitted that there is delay in consideration of the representation of the detenu dated 30.12.2005. With regard to the same, learned Government Advocate (Criminal Side) furnished the details, which show that though the detenu has made two representations said to have sent on 30.12.2005 itself, one was received by the Government on 02.01.2006 and another one on 04.01.2006. Hence, we treat the representation received on 02.01.2006 as a first representation and let us see whether the said representation was considered and disposed of expeditiously. The particulars show that remarks called for on 03.01.2006; remarks received on 06.01.2006 and thereafter file was submitted on 09.01.2006 and the same was dealt with by Deputy Secretary and Under Secretary on the same day i.e., on 09.01.2006. The Minister for Prohibition and Excise passed an order on 10.01.2006 and rejection letter was prepared on 13.01.2006. Thereafter, the same was sent to the detenu on 16.01.2006 and served to the detenu on 17.01.2006. If we exclude the intervening holidays, we are of the view that the time taken at every stage is reasonable and acceptable and there is no enormous delay as claimed by the learned counsel for the petitioner.

4. Coming to the representation received on 04.01.2006, we have already said the same is a second representation. Here again, it is not in dispute that the said second representation was duly considered and disposed of. No doubt, after the order by the Minister on 16.01.2006, rejection letter was prepared only on 30.01.2006. However, 21st, 22nd, 26th, 28th and 29th of January, 2006 were holidays. Even otherwise, as observed earlier, the said representation received by the Government on 04.01.2006 being second representation, we are satisfied that the same has been considered and disposed of. Inasmuch as the first representation of the detenu was dealt with, considered and disposed of without any delay and of the fact that the second representation was also considered and disposed of, we are unable to accept the contention raised by the learned counsel for the petitioner.

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5. Learned counsel for the petitioner by drawing our attention to four adverse cases, contended that the Detaining Authority while considering the imminent possibility has not adverted to those cases. In other words, according to the learned counsel in the absence of awareness relating to other four adverse cases, the detention order is liable to be interfered with. As against the said contention, learned Government Advocate (Criminal Side) rightly pointed out that among the four adverse cases, for adverse cases 1 to 3, charge sheet has been filed and those cases are pending trial before the respective courts. With regard to fourth adverse case, it is stated that the detenu was not arrested. According to him, only in respect of the ground case in Crime No.1124 of 2005 on the file of H-1 Washermanpet Police Station, the detenu was arrested and remanded as per the order of the learned Magistrate. According to him, the detaining authority was very well aware of the said aspect, namely, that the detenu was remanded only in respect of ground case Crime No.1124 of 2005 and taking note of the fact that he has not moved any bail application so far and by filing bail application there is real possibility of coming out on bail by the orders of the Sessions Court or Higher Court. Taking note of his past acts and of the fact that if he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order, after satisfying himself, passed the detention order. In the light of the above information, we are satisfied that the detaining authority was aware of the fact that the detenu was remanded only in respect of ground case No.1124 of 2005 and this was very well taken note of by him before passing the order of detention. Accordingly, we reject the arguments urged by the learned counsel for the petitioner.

6. Finally, the learned counsel for the petitioner by drawing our attention to the reference made in the copy of accident register in respect of the Head Constable and the averments in para 3 of the grounds of detention would contend that there is a discrepancy and the said vital aspect has not been considered by the detaining authority while passing the order of detention. In the light of the said contention, we verified the necessary averments in para 3 of the grounds of detention as well as the statement of the Head Constable, viz., Mahendramani. On going through the entire statement of the Head Constable and the averments in para 3, we are satisfied that first of all there is no discrepancy, since the detaining authority has merely stated that the "knife fell over his left shoulder". There is no statement that the knife caused injury on his left shoulder. If we consider the entire statement of the said Head Constable made in para 3, we are of the view that there

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is no discrepancy at all as claimed by the learned counsel for the petitioner. Accordingly, we reject the said contention also.

In the light of what is stated above, we do not find any merit in the petition and accordingly, it is dismissed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Police,
   Egmore, Greater Chennai,
   Chennai-600 008.

2. The Secretary to Government,
   Prohibition and Excise Department,
   Secretariat,
   Chennai-9.

3. The Inspector of Police,
   H1, Washermanpet Police Station,
   Chennai.

4. The Superintendent,
   Central Jail,
   Chennai.

5. The Public Prosecutor, High Court, Madras.

6. The Joint Secretary to Government
   Public (Law and Order) Department
   Fort St.George, Chennai-9.

+ one cc to Mr.R.Ramanlal, Advocate Sr.No.18044.

VC (CO)/RSM/26.4.2006

H.C.P.No.74 of 2006

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